

**NOTICE OF PUBLIC HEARING
IDENTIFICATION OF CHILDREN WITH
SPECIFIC LEARNING DISABILITIES**

NOTICE IS HEREBY GIVEN That pursuant to ss. 115.762 (3) (a) and 227.11 (2) (a), Stats., and interpreting ss. 115.76 (5) (a) 10. and (b) and 115.78 (1m), Stats., the Department of Public Instruction will hold public hearings as follows to consider proposed permanent rules amending s. PI 11.36 (6), relating to the identification of children with specific learning disabilities. The hearings will be held as follows:

DATE AND TIME

LOCATION

March 16, 2010
4:00 - 7:00 p.m.

Madison
GEF 3 Building
125 South Webster St.
Room 041

March 18, 2010
4:00 - 7:00 p.m.

Oshkosh
CESA 6
2300 State Road 44
Conference Room

April 7, 2010
4:00 - 7:00 p.m.

Chippewa Falls
CESA 10
725 West Park Ave.
Conference Room

April 14, 2010
4:00 - 7:00 p.m.

Brookfield
CESA 1
19601 Bluemound Road
Room A

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Vaunce Ashby, Specific Learning Disability Educational Consultant at (608) 267-2841 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

The administrative rule and fiscal note are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.wi.gov or by writing to:

Lori Slauson, Administrative Rules and Federal Grants Coordinator
Department of Public Instruction
125 South Webster Street

P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than April 23, 2010, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

Statute interpreted: Sections 115.76 (5) (a) 10. and (b) and 115.78 (1m), Stats.

Statutory authority: Sections 115.76 (5) (b) and 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 115.762 (3) (a), Stats., requires the department to ensure that all children with disabilities are identified, located and evaluated.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule:

Subchapter V of Chapter 115, Stats. Chapter PI 11, Wis. Admin. Code.

Plain language analysis:

In 2004, the Individuals with Disabilities Education Act (IDEA) modified the evaluation procedures for the identification of children with specific learning disabilities (SLD) under 20 U.S.C. 1414 (b) (6). As specified in IDEA, the evaluation procedures relating to the identification of specific learning disabilities provide that: States may not require the use of significant discrepancy as part of a determination of SLD, and must permit the use of a process based on a child's responses to scientifically-based intervention as part of its determination of SLD. This proposed rule clarifies the insignificant progress component commonly known as scientific, research-based or evidence-based interventions and the interventions' integrity. The IEP team needs to include a person qualified to assess data on a pupil's individual rate of progress, who has implemented a scientific, research-based or evidenced-based intervention with that pupil, and who has observed the pupil while he or she is receiving the intervention. If an existing IEP team member can fulfill these roles, an additional team member is unnecessary.

IDEA also added reading fluency skills as an area of identification for SLD. Because the department's current rule under s. PI 11.36 (6), relating to specific learning disabilities is not consistent with the federal requirements, the rule will be recreated to align with the U.S. Code. The proposed rules will allow a five-year period during which a school district "is permitted but not required" to continue to use the significant discrepancy formula in identifying children with SLD. After that five-year period, the significant discrepancy formula may not be used.

The department submitted a rule modifying the SLD criteria and significant developmental delay (SDD) criteria to the Legislative Clearinghouse for review on June 4, 2007 (See CHR 07-058). The SLD criteria has changed significantly from the version in CHR 07-058, and therefore, is being re-submitted for Clearinghouse review and public hearings. The information relating to the SLD criteria will be removed from CHR 07-058 before the rule is submitted to the chief clerk of each house of the legislature in final draft form under s. 227.19 (2), Stats.

Summary of, and comparison with, existing or proposed federal regulations:

The proposed rules reflect the SLD language under 34 ss. CFR 300.307 to 300.311 as authorized under 20 U.S.C. s. 1221e-3, 1401 (30), and 1414 (b) (6). In addition, the rule clarifies the insignificant progress component commonly known as scientific, research-based or evidence-based interventions and the interventions' integrity. The IEP team needs to include a person qualified to assess data on a pupil's individual rate of progress, who has implemented a scientific, research-based or evidenced-based intervention with that pupil, and who has observed the pupil while he or she is receiving the intervention. If an existing IEP team member can fulfill these roles, an additional team member is unnecessary.

Comparison with rules in adjacent states:

Illinois- Beginning in 2010-2011 Illinois will require school districts to use a process based on a child's response to scientific, research-based interventions as part of SLD evaluation.

Iowa-Beginning August, 2010, Iowa will require the use of a process based on the child's response to scientific, research-based intervention or the use of other alternative research-based approaches and prohibits the use of a severe discrepancy between intellectual ability and achievement.

Michigan-Language going to public hearings in November, 2009 proposes the use of methods for determining SLD eligibility based on the use of scientific, research-based interventions and patterns of strengths and weaknesses. At this point the discrepancy model or a sunset clause is not mentioned.

Minnesota-The SLD criteria states that the child does not achieve adequately, has a disorder in one or more of the basic psychological processes, and the demonstration of a severe discrepancy or the demonstration of inadequate rate of progress.

Summary of factual data and analytical methodologies:

In 2004, the Individuals with Disabilities Education Act (IDEA) modified the evaluation procedures for the identification of children with specific learning disabilities (SLD) under 20 U.S.C. 1414 (b) (6). As specified in IDEA, the evaluation procedures relating to the identification of specific learning disabilities provide that: 1) States may not require the use of significant discrepancy as part of a determination of SLD, 2) States must permit the use of a process based on a child's responses to scientifically-based intervention as part of its determination of a SLD, and 3) States may permit the use of other alternative research-based procedures to determine whether a child has a SLD. IDEA also added reading fluency skills as an area of identification for SLD. Because the department's current rule under s. PI 11.36 (6), relating to specific learning disabilities is not consistent with the federal requirements, the rule will be modified to align with the U.S. Code. The proposed rules will allow a five-year period during which a school district "is permitted but not required to" continue to use the significant discrepancy formula in identifying children with SLD.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: N/A**Anticipated costs incurred by private sector: N/A****Effect on small business:**

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Agency contact person: (including email and telephone)

Stephanie Petska, Director, Special Education, stephanie.petska@dpi.state.wi.us, 608/266-1781

Fiscal Estimate

The proposed rules modify eligibility criteria used to identify children with specific learning disabilities (SLD) to be consistent with federal requirements. The federal requirements now specify state local education agencies (LEAs) shall not be required to consider a severe discrepancy and must permit the use of a process based on child's response to scientific, researched-based intervention in determining whether a child has an SLD. This rule modification should not result in altering the size of the population of children identified as having a disability. Wisconsin must comply with federal requirements in order to remain eligible to receive more than \$200 million in federal IDEA funds.

These rules are not expected to have a local or state fiscal effect.

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

State Superintendent or Designee

Date